EPA's Preliminary Major Concerns with the Administrative DEIS/DEIR for the Bay Delta Conservation Plan (BDCP)

June 5, 2013

1. **The BDCP is built on an assumption that is not supported by science.** It does not present a scientifically defensible mechanism for protecting designated uses, including aquatic life, fish migration, and wildlife habitat. Numerous scientific reports conclude that habitat restoration alone cannot protect fish populations, and that additional flows are needed in the estuary to protect aquatic life. State and federal water and fisheries agencies, the National Academy of Sciences, and the Public Policy Institute of California agree that existing conditions are not protecting aquatic life, and that salmon and steelhead populations are declining under current flow conditions. [1][2][3][4][5] The DEIS acknowledges that Delta outflow under all scenarios of the Preferred Alternative "would likely decrease or remain similar compared to the conditions without the project"; therefore, the Preferred Alternative would not meet its own purpose and need to provide "for the conservation and management of covered species through actions within the Planning Area that will contribute to recovery of the species."

2. **All project alternatives will violate water quality standards.** The proposed changes in water management would likely measurably exacerbate the existing impairment of agricultural and aquatic life beneficial uses in the southern delta and Suisun marsh, and municipal water supply beneficial uses at Antioch, Mallard Slough, intakes of the Contra Costa canal, and Barker Slough. According to the DEIS:
   - Bromide, chloride, DOC, and salinity/EC levels are expected to increase due to seawater intrusion from the Bay and Ocean and the increased pumping of freshwater from the North Delta. Consequences could include increases in water treatment costs, and changes in the low salinity zone that could adversely affect fish populations.
   - Mercury, pesticides, and selenium exposure levels may increase, making it more difficult to protect public health and aquatic life from these contaminants. Sport fish in the Delta already have higher concentrations of mercury and PCBs than anywhere else in the state.[6]

3. **The level of analysis for the different alternatives is incomplete, inconsistent, and not comparable.**
   - The DEIS does not evaluate each alternative, nor compare the alternatives, for their expected levels of compliance with all narrative and numeric water quality standards contained in the existing Bay Delta Water Quality Control Plan. For example, it omits any analysis pertaining to the project's compliance with the existing Delta Outflow objective. The proposed project must demonstrate compliance with water quality standards to obtain State and federal authorizations, certifications, and permits under the CWA.

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[1] State Water Resources Control Board's, 2010 Flows Report, p.2.

[2] "Interior remains concerned that the San Joaquin Basin salmonid populations continue to decline and believes that flow increases are needed to improve salmonid survival and habitat." USFWS May 23, 2011 Phase I Scoping Comments, available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/cmmnts052311/amy_aufdemberge.pdf

[3] "Inadequate flow to support fish and their habitats is directly and indirectly linked to many stressors in the San Joaquin river basin and is a primary threat to steelhead and salmon." NMFS February 4, 2011 Phase I Scoping Comments, available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/cmmnts020811/010411dpowell.pdf

[4] "…current Delta water flows for environmental resources are not adequate to maintain, recover, or restore the functions and processes that support native Delta fish." Executive Summary in 2010 CDFG Flow Criteria.

[5] "a strong majority of scientists prioritizes habitat and flow management actions that would restore more natural processes within and upstream of the delta" (p. 2) http://www.ppic.org/content/pubs/report/R_413EHR.pdf

[6] http://www.waterboards.ca.gov/water_issues/programs/swamp/rivers_study.shtml

- The DEIS estimates water supply benefits of all the alternatives for those who receive water from the CVP and SWP under contract with USBR and DWR, respectively; but provides no estimates of decreases/increases in endangered fish populations resulting from the construction and operation of any alternative, nor under existing and no action conditions.[7] Readily available technical information was not applied to estimate the response of fish populations to alternate flow regimes resulting from the various project alternatives.
- The document is supposed to be a programmatic evaluation of all the components of the HCP except for Conservation Measure 1- the Delta Tunnels. The level of detail provided in the DEIS for the tunnels is not commensurate with that of other large public projects around the country. This contributes to the document's conclusion that impacts would be essentially the same for all alternatives (i.e., further beneficial use impairments for the Preferred Alternative and the entire range of operations H1-H4), and precludes informed decisionmaking.

4. **The DEIS does not provide an adequate basis for the Corps to issue a CWA section 404 dredge and fill permit for the project.** Information in the DEIS suggests there may be difficulty obtaining a CWA 404 permit for this project as described. These problems include information that shows alternatives violate state water quality standards (40 CFR 230.10(b)) and an insufficient level of detail for making a CWA permit decision (40 CFR 230.12(a)(3)). NEPA does not require applicants to include the CWA Section 404 permit application, however we understand the applicant is likely to need a CWA 404 permit for the Delta Conveyance Project.

5. **The mitigation commitments (location, costs, and responsible parties) are undefined.**

6. **The analysis appears to blame climate change and sea level rise for the bulk of the adverse effects on species, particularly regarding salinity.** Although EPA appreciates the analysis of climate change, and agrees that salinity will likely increase as a result of climate change, we are concerned that the approach taken in the DEIS uses climate change as a rationale for the proponents to deny responsibility to share the burden of addressing the resulting ecological impacts. We are concerned that this may be precedent-setting. If there will be increased climate-change-induced demand for fresh water, how should the burden be distributed across the affected resources and water recipients?

7. **Support for a comprehensive approach.** We note that this project appears to have multiple purposes – protecting endangered species, changing the method of export water conveyance through or around the Delta, and enhancing the reliability of water supplies south of the Delta. Water export deliveries have been a major constraint on BDCP alternatives. In recent years, EPA has been a strong advocate of taking a comprehensive view of water resource management to meet multiple goals in a more effective and efficient manner. That comprehensive view –integrated water resource management – is not part of this document, and probably should be. Including a complete analysis of the Portfolio Alternative would be a starting point.

[7] In their 2005 update to the implementation plan for the Anadromous Fish Restoration Program (AFRP), FWS estimated the flow volumes that would be necessary to 'double' the natural production of certain salmonids.